



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,481	10/25/2001	John C. Vellinger	AA206/98001	4356

7590 06/16/2004

David W. Carrithers
CARRITHERS LAW OFFICE
One Paragon Centre
6060 Dutchman's Lane, Suite 140
Louisville, KY 40205

EXAMINER

BEISNER, WILLIAM H

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,481

Applicant(s)

VELLINGER ET AL.

Examiner

William H. Beisner

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 and 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2 and 3 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 2 and 3 both recite the new claim limitation that the apparatus includes “a housing enclosing said reactor vessel” and “a manifold extending thorough said housing in fluid connection with said reactor vessel”.

While the originally filed disclosure provides support for “a housing enclosing said reactor vessel” (See element 70 and page 13, lines 4-12, of the instant specification), the originally filed disclosure does not provide support for the claimed manifold that extends thorough the housing enclosing the reactor vessel. It appears that the claimed manifold is associated with the later claimed “sealed compartment in fluid communication with the reactor vessel including means for collecting samples”. Pages 11 and 12 of the instant specification disclose the sealed compartment (30) with a manifold system (32).

With respect to claimed “means for controlling the humidity within said reactor vessel”, while the originally filed disclosure provides support for controlling the humidity within a housing enclosing the reactor vessel, the originally filed disclosure fails to provide support for “means for controlling the humidity within said **reactor vessel**”.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 3 are indefinite because they includes numerous occurrences of listings of structural elements and fails to positively set forth structural cooperation between the listed elements. For example, the claim fails to set forth structural cooperation between the recited reactor vessel and the claimed “means for filtering”; “means for pumping”; “means for injecting”; the “permeable tube” and “pump” of the “means for exchanging gases”; “means for storing fresh medium”; “means for pumping”; “valve means”; “power supply” and “rotary multiple sample collector”. That is, how does the recited “means for filtering” cooperate with the rest of the vessel? Is it interior to the cylinder or provided on a port or union? The same holds true for the other recited elements that make up the claimed apparatus in addition to the recited vessel. Finally, while the claim recites a sealed external housing, it is not clear if the recited power supply and computer are part of the claimed device since they have not be positively recited as elements of the apparatus. Also the claim recites that the filtering means

Art Unit: 1744

includes “means for pumping”, the gas exchange means includes “a pump” and a separate “means for pumping”. Are these all separate pumping devices or has the same pumping device been recited multiple times? It is not clear from the instant claim language. If the instant claim includes three separate pumps, there may be an issue of new matter since the originally filed disclosure does not appear to support a claimed device that includes three separate pumping devices.

With respect to claim 2, mere recitation of “a rotary multiple sample collector” linked with its intended use is not enough to clearly define the metes and bounds of the structure of the device encompassed by this claim language. Note, this claim language is not considered to be covered by 35 USC 112, sixth paragraph. While the language recites the intended function of the sample collector, it is not clear what structures provide the intended functions and/or how the collector and/or associated structure cooperate with the rest of the positively recited device.

Claim 3 is indefinite for the same reasons as set forth with respect to claim 2. It is not clear how the recited means cooperate with the physical structure of the recited rotating inlet and compartment with a filter. Clarification and/or correction is requested.

Allowable Subject Matter

5. Claims 2 and 3 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, first and second paragraph, set forth in this Office action.

6. The following is a statement of reasons for the indication of allowable subject matter:

Claims 2 and 3 would be allowable because the prior art of record fails to teach or fairly suggest

the combination of the elements recited in these claims with a sampling system as recited in claims 2 or 3 wherein the sampling system includes a plurality of sample retaining chambers and filters with a rotary inlet port and wherein the sampling system is capable of collecting cells on the filter, fixing the cells and storing the cells.

Response to Arguments

7. Applicant's arguments filed 31 March 2004 have been fully considered but they are not persuasive.

Applicants' cancellation of claim 1 is sufficient to overcome the prior art rejections of record.

With respect to the 35 USC 112, second paragraph, rejections of record, Applicants' amendments to the claims is not persuasive to overcome the rejections of record. As stated in the 35 USC 112, second paragraph, rejections above, the instant claim language fail to clearly set forth structural cooperation between the listed elements, especially in view of the claimed reactor vessel. Furthermore, Applicants' amendments have raised new issues concerning new matter.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

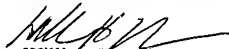
Art Unit: 1744

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


William H. Beisner
Primary Examiner
Art Unit 1744

WHB